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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

Nos. 831

FORD MOTOR COMPANY,
Defendant and Appellant,
vs.
ALEXANDER PARK, ET AL.,
Plaintiffs and Appellees,
THOMAS M. KAVANAGH, Attorney General,
Intervenor and Appellee,
THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and
MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees

FORD MOTOR COMPANY,
Defendant and Appellant,
vs.
JOHN L. DORSEY, ET AL.,
Plaintiffs and Appellees,
THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and
MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS

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ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS

Appellees in the above-entitled cause, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United

States, move to dismiss on the grounds that (1) it does not present a substantial federal question; (2) the federal questions sought to be reviewed were not timely or properly raised, or expressly passed on; and (3) the judgments of the Supreme Court of Michigan rest on an adequate non-federal basis.

OPINIONS BELOW

The question appellant seeks to review is considered in the opinions of the Supreme Court of Michigan in 355 Michigan 103 of the Official Michigan Report and in 94 N. W. (2d) 407, reproduced in the Jurisdictional Statement, Appendix A (pp. 29-73).[1]

JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 62 Stat. 929 (1948), 28 U. S. C. §1257 (2). For the reasons set forth herein the Appeal should be dismissed.

STATUTE INVOLVED

The pertinent provisions of the Michigan Employment Security Act[2] are as follows: (References in Jurisdictional Statement contain emphasis added by appellant which appellees deem questionable in some instances)

> "Sec. 2: The legislature acting in the exercise of the police power of the state declares that the pub-

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[1] Page references are to Jurisdictional Statement, unless otherwise indicated.

[2] Mich. Comp. Laws §§421.1-.62 (1948), Mich. Stat. Ann. §§17.501-.566 (1951), as amended.

lic policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state."[3]

"Sec. 29. (1) An individual shall be disqualified for benefits:

* * * * *

(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then

[3] Mich. Comp. Laws §421.2 (1948), Mich. Stat. Ann. §17.502 (1951).

employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed."[4]

[4] Mich. Comp. Laws §421.29 (1948), Mich. Stat. Ann. §17.531 (1951).

QUESTION PRESENTED

If any federal question has been properly raised and presented, the Jurisdictional Statement does not accurately state such question. We restate what appellees believe to be the only possible federal question raised:

> May the State of Michigan allow unemployment benefits without disqualification to persons unemployed through no fault of their own when their involuntary unemployment at plants of the Ford Motor Company in Detroit, Michigan results from a strike in a Canton, Ohio, Ford plant?

In addition, appellees, by their Motion to Dismiss, raise the following issues:

(1) It does not present a substantial federal question;

(2) The federal questions sought to be reviewed were not timely, or properly raised, or expressly passed on; and

(3) The judgments of the Supreme Court of Michigan rest on an adequate non-federal basis.

STATEMENT OF THE CASE

The Supreme Court of Michigan put the issue clearly in the opening paragraph of the Opinion of Justice Edwards, as follows:

> "* * * we conclude that they (these cases) turn upon the answer to a relatively simple legal question —Does the term 'the establishment,' as used in the Michigan employment security act, encompass both

Ford plants in the vicinity of Detroit, Michigan, and the Ford forge plant at Canton, Ohio, for the reason that the former cannot operate long without the latter?" (Ex. A, p. 30.)

As to the facts, the Court said:

"In the lengthy record which contains much hotly-disputed testimony, 2 facts appear to be clear and beyond dispute: (1) that the employees concerned were laid off either as a direct or indirect result of the failure of forgings previously manufactured at the Canton forge plant to arrive at departments or plants where they would customarily be incorporated into subassemblies and assemblies of Ford products; (2) that no strike vote, call, walkout, or picketing occurred in any of the 3 plants under consideration, and that all employees concerned continued work until laid off by the company (indeed some of them returned to work on call during the period of the Canton forge plant strike), and that other union employees, whose operations were not affected by the lack of forgings, continued work in each of the 3 plants through most or all of the entire Canton strike period." (Ex. A, p. 31.)

As to the subject matter of the dispute, the Court said:

"The briefs of claimants in these cases argue that the Canton forge plant strike was over purely local issues, and was unrelated to the negotiations for reopening and modification of the master agreement. It is the company's position that the Canton forge plant strike was a device employed by the union for the purpose of forcing modification of the master agreement. In either event, it appears that the settlement of the Canton forge plant strike, and the modification of the master agreement, both occurred on May 25, 1953, following by 3 days a similiar modification of a national agreement between the UAW and the General Motors Corporation signed on May 22, 1953." (Ex. A, p. 32.)

The Court then comments on the term "establishment" as follows:

> "While we believe the appeal board and the circuit judge were right in terming the interpretation of the word 'establishment' the 'pivotal issue' of this case, we believe they were wrong in extending the definition of 'the establishment' employed in *Chrysler v. Smith, supra.* Indeed, on the basis of what has been said, we feel constrained to hold that to the extent that *Chrysler v. Smith*, 297 Mich. 438 (135 A. L. R. 900), adopted 'integral functioning' as the basic test of the extent of 'the establishment' in the Michigan employment security act (CLS 1952, §421.29(1) (Stat. Ann. 1953 Cum. Supp. §17.531(1)), it is overruled." (Ex. A, pp. 52-53.)

It concludes:

> "A reading of section 29(1)(b) indicates clearly that it applies only to disqualification of 'an individual' 'for any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed.' That there was a stoppage of work is obvious, as is the fact that there was a labor dispute. Plainly, the labor dispute which caused the stoppage was, however, in the Canton forge plant which we have held to be no part of 'the establishment' in which claimants were last employed. Michigan claimants, under our act and on this record, cannot be found responsible for that dispute unless we indulge the principal-agent argument previously quoted from the Georgia court which we have rejected."

> "Further, the basic disqualification finding required in the first sentence of Section 29(1)(b) must be legally made before the proviso relating to 'direct involvement' becomes effective, and before considering or applying the tests of direct involvement set forth in subsections 1, 2, 3 and 4." (Ex. A, p. 54.)

REASONS FOR GRANTING MOTION TO DISMISS

(1) A substantial federal question is not presented:

Appellant argues, first, that there is a substantial federal question involved because:

> "As now construed by the Supreme Court of Michigan, however, the basic disqualification under the statute turns not upon the employee's direct involvement in fact, but rather upon the location of the employer's integrated operations." (17)
>
> • • • • •
>
> "The classification is therefore arbitrary and invalid under the Equal Protection Clause of the Federal Constitution." (18)

Appellant argues, second:

> "The discrimination made in this case • • • also infringes the Commerce Clause by imposing an undue burden upon interstate commerce where, as here, the labor dispute occurs in a plant outside the State." (20-21)

(a) The Equal Protection Clause:

Appellant asserts:

> "The controlling principles were recently stated in *Allied Stores of Ohio v. Bowers* (No. 10, Oct. Term 1958, February 24, 1959)." 3 L. ed. 2d 480 (1959), (18).

culling out words of comfort from a portion of that decision. Appellant fails to set forth the language which follows immediately after the quoted statement, and which lays down the rule of the case:

> "'If the selection or classification is neither capricious nor arbitrary, and rests upon some reason-

able consideration of difference or policy, there is no denial of the equal protection of the law.' *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, 573. *State Board of Tax Comm'rs v. Jackson*, 283 U. S. 527, 537. That a statute may discriminate in favor of a cerain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy. *American Sugar Ref. Co. v. Louisiana*, 179 U. S. 89; *Stebbins v. Riley*, 268 U. S. 137, 142."

* * * * *

"* * * Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the Equal Protection Clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78; *Quong Wing v. Kirkendall*, 223 U. S. 59; *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357; *State Board of Tax Comm'rs v. Jackson, supra*, 283 U. S. at 527." 3 L. ed. 2d 480, 485-86 (1959).

Concurring, Mr. Justice Brennan, with whom Mr. Justice Harlan joins, says:

"* * * the utmost latitude, under the Equal Protection Clause, must be afforded a State in defining categories of classification." 3 L. ed. 2d 480, 488 (1959).

The instant case is not the first time that the cry of "equal protection" has been raised, without success, before this Court. *Lawrence Baking Company v. U. C. C.*, 308 Mich. 198, 13 N. W. (2d) 260, 154 A. L. R. 660 (1944), in which petition for writ of certiorari was denied by the Supreme Court of the United States, October 9, 1944, 323 U. S. 738, was a case in which:

"* * * striking employees filed claims with defendant commission for unemployment compensation benefits. * * *" 308 Mich. 198, 203.

The Supreme Court of Michigan allowed payment of benefits on the ground that the striking employees had been replaced and there was no "stoppage of work" in the establishment concerned as a result. It, therefore, held that the disqualification was inapplicable. Employer's attack raised the issues of "due process and equal protection of law". The Court rejected this attack, quoting in its support *Carmichael v. Southern Coal and Coke Company*, 301 U. S. 495, which upheld the Alabama Unemployment Compensation Act, as follows:

> "A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it." (at 509)

The Michigan Court commented:

> "Under the amendment, as construed, employees are disqualified if the labor dispute results in a stoppage of the employer's work, and they are not disqualified if the labor dispute does not result in such stoppage. This is a reasonable means of determining qualification for benefits and does not result in arbitrary or unjust discrimination between employers." (at 212)

Also see *Lower Vein Coal Co. v. Industrial Board of Indiana, et al.*, 255 U. S. 144; *Ward and Gow v. Himan Krinsky, et al.*, 259 U. S. 503, involving construction of state Workmen's Compensation Acts, to the same effect.

Since enactment of the ingenious tax device in the Social Security Act, 49 Stat. 620, 42 U. S. C. §§301-1305, which induced immediate passage in 1936-7 of unemployment compensation laws in every one of the fifty-two States and

Territories, the Supreme Court of the United States has consistently rejected all attempts to obtain review of decisions of state courts interpreting such statutes. As was said in *Lower Vein Coal Co., supra*, as far back as 1920:

> "The principle of law involved and the power of a state to distinguish and classify objects in its legislation have been too often declared, too abundantly and variously illustrated, to need repetition * * *." (at 147)

The classification here involved is one which groups by plant location, challenged by an appellant urging classification by functionally integrated corporate entity. Every unemployment compensation law in the land contains some form of labor dispute disqualification which follows a similar method of classification, namely, by physical location. In thirty-nine states, and the District of Columbia, the classification hinges upon whether or not the labor dispute in question occurs in the "factory, establishment, or other premises". Eight states, including Michigan, speak of "the establishment". One state, Idaho, speaks in terms of "premises". (See Commerce Clearing House: *Unemployment Insurance Reporter.*) Surely there is no basis for claim that this method of classification in Michigan is "invidious or palpably arbitrary". *Allied Stores of Ohio, Inc.*, 3 L. ed. 2d 480 (1959).

(b) The Commerce Clause:

Appellant complains that if it wishes to avoid payment of benefits to its involuntarily unemployed workers under the circumstances here, it can do so only by "moving all such operations to a single location within the State" (21). What is the "undue burden" here in question?

Under the Michigan Statute benefits are paid out of a pooled fund created and maintained by taxation of em-

ployers (Section 17(a)).[5] However, the tax rate of any employer *may* be, but not necessarily is, affected by the payment of benefits to his employees or former workers in any particular case. The Commission maintains a separate "rating account" for each employer, which includes the total wages paid by employer and total benefits charged against employer's record (Sec. 17(a)).[6] A "rating account percentage" is obtained by dividing the said benefits by the said payroll (Sec. 18(c)).[7] Based upon this, an employer's tax rate may vary between .0% and 4.0% of his payroll (Sec. 19(a)).[8] There is nothing in the record concerning what, if any, effect the payment of the claims here in question will have upon the tax rate of Appellant. In any event, the tax imposed to create and maintain the fund out of which unemployment compensation benefits are paid here is for a public purpose expressly declared in an enactment falling within the range of legislative police powers, and the policy involved is one with which the courts never have interfered.

Any contention that the interpretation of the Statute by the Michigan Court places an undue burden on interstate commerce must perforce be based on the fact that Ford Motor Company is a foreign corporation doing business in Michigan, and engaged in selling its products throughout the United States. The fact that the Court awarded

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[5] "All contributions to the said fund shall be pooled and available to pay benefits to any individual entitled thereto under this act, irrespective of the source of such contributions." Mich. Comp. Laws §421.17(a) (1948), as amended, Mich. Stat. Ann. §17.518 (a), (Supp. 1957).

[6] *Ibid.*

[7] Mich. Comp. Laws §421.18 (c) (1948), as amended, Mich. Stat. Ann. §17.519 (c) (Supp. 1957).

[8] Mich. Comp. Laws §421.19 (a) (1948), as amended, Mich. Stat. Ann. §17.520 (a) (Supp. 1957).

benefits to Michigan workers laid off as a result of a strike in a plant located in Canton, Ohio, is not significant. In determining if an undue burden exists, location of the struck plant in Canton, Ohio, or in Northern Michigan is a distinction without a difference insofar as the legal principle is concerned.

If an increase in the tax rate would not be an undue burden had the strike occurred in a Northern Michigan plant of the Company, the occurrence of the strike in Ohio creates no greater impact.

What appellant is attempting to secure is a ruling that, with respect to any corporation engaged in interstate commerce within the boundaries of the State of Michigan, the allowance of unemployment compensation benefits to innocent workers laid off in one plant by reason of a strike in another physically separated plant of the same corporation creates an undue burden on interstate commerce.

The Federal Unemployment Tax Act, Chapter 23 of the Internal Revenue Code of 1954, provides for crediting against the 3% payroll tax levied on employer's (68A Stat. 439 (1954), 26 U. S. C. §3301) contributions paid under State Unemployment Compensation Laws (68A Stat. 439 (1954), 26 U. S. C. §3302), provided such state laws are certified as containing certain minimum standards. Reference to these standards (68A Stat. 443 (1954), 26 U. S. C. 3304(a)) establishes that they in no way required that *any* disqualification be imposed by a state for unemployment due to a labor dispute in order for such certification to be granted.

Per contra, sub-section (5) of 68A Stat. 443 (1954), 26 U. S. C. §3304(a) provides that:

> "Compensation shall not be denied in such State to any otherwise eligible individual for refusing to

accept new work under any of the following conditions:

"(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; * * *."

This is the *only* reference to the effect of a labor dispute.

No constitutional inhibition would prevent the Michigan Legislature, if it so chose, from amending the labor dispute disqualification to pay benefits to *strikers* while they are on strike.[9]

Nothing in the Constitution would prevent Michigan, as a second alternative, from paying benefits to all workers unemployed in the same corporation *except* the strikers, *whether unemployed in the same plant or not.* If ten key men struck in the Ford Rouge Plant in Detroit, Michigan, causing the unemployment of the tens of thousands of workers in the *same* plant, then not only would those consequently laid off in *other* plants receive benefits, but those laid off in the *same* plant would be paid as well.

Nor is any complaint made of the fact that when a strike by the United Automobile Workers Union in a supplier corporation *not* part of its corporate structure causes a shutdown at Ford, its consequently laid off employees do in

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[9] Note *Lawrence Baking Company v. UCC*, 308 Mich. 198 (1944), 13 NW 2d 260, 154 ALR 660, *cert. denied*, 323 U. S. 738.

Both New York and Rhode Island currently pay benefits to workers on strike after a stated number of weeks of unemployment. Rhode Island General Laws of 1956, as amended, Chapter 44, Sec. 28-44-16; Consolidated Laws of New York, Recodified by Chapter 706 L, 1944, as amended, Title 7, Section 592.1.

"The Ford Motor Company * * * operates manufacturing plants in * * * Buffalo and Green Island, New York." Page 10(b), Joint Appendix on Appeal.

See reference by Michigan Supreme Court below to *Macheinski v. Ford Motor*, Exhibit "A", page 45, which Ford did not attempt to appeal.

fact receive their unemployment compensation. (Chrysler-Detroit employees recently experienced this situation when laid off because of strike at another corporation which is the supplier of glass to Chrysler.)

How then is it unconstitutional to provide, as does the Michigan law in this case, that those *involuntarily* laid off in one plant because of a strike in another plant of the same corporation are not disqualified, based on a method of classification which categorizes on the basis of whether or not the dispute occurred in the "establishment" in which claimant was last employed?

(c) The Concept of "Fair Play":

Appellart refers to "another basic constitutional requirement—that of fair play", which it describes as lodging "in the overlap of due process with equal protection." (20) In *International Shoe Company v. State of Washington*, 326 U. S. 310, Mr. Justice Black comments:

> "There is a strong emotional appeal in the words 'fair play,' 'justice,' and 'reasonableness,' but they were not chosen by those who wrote the original Constitution or the Fourteenth Amendment as a measuring rod for this court to use in invalidating State or Federal laws passed by elected legislative representatives. No one, not even those who most feared a democratic government, ever formally proposed that courts should be given power to invalidate legislation under any such elastic standards. * * * For application of this natural law concept, whether under the terms 'reasonableness,' 'justice,' or 'fair play,' makes judges the supreme arbiters of the country's laws and practices. This result, I believe, alters the form of government our Constitution provides. I cannot agree." (at 325-6)

If this concept were to be invoked here, it would argue in favor of payment of benefits to these involuntarily unemployed workers, laid off because of a strike in another plant far removed from their places of employment.

(2) The federal questions sought to be reviewed were not timely or properly raised, or expressly passed on:

Appellant asserts:

> "The objections upon Federal grounds presented by the application for rehearing could not have been made until after the decision of the State Supreme Court." (14)

Prior to the decision of the Supreme Court of Michigan, the instant cause was the subject of two levels of administrative determination by the Michigan Employment Security Commission, a decision of a Commission Referee after lengthy hearings, a decision by the MESC Appeal Board, and a decision by the Circuit Court for the County of Wayne. Appellant made no attempt to claim that federal questions were involved until it filed its brief with the Supreme Court of Michigan. Only on the occasion of its application for rehearing before the State Supreme Court did it for the first time squarely attack this issue. Review of the three Opinions of the Supreme Court of Michigan (30-73), and the Opinion of the State's Circuit Court below (73-123) reveals that the federal questions were not passed upon by the State Courts.

Michigan law is well settled that constitutional issues will not be considered by the State Supreme Court unless raised previously in the lower court. In *City of Dearborn v. Village of Allen Park,* 348 Mich. 449 (1957), the Court says:

> "It is also urged by plaintiffs that the action taken by the board of supervisors deprived Ford Motor Company and Detroit, Toledo and Ironton Railroad Company of their constitutional rights. We note that this issue was not raised in the lower court. It is now too late to raise this issue." (at 455)

See *Stembridge v. State of Georgia*, 343 U. S. 541, 547-8; *Bailey v. Anderson*, 326 U. S. 203, 206-7; *Mutual Life Ins. Co. v. McGrew*, 188 U. S. 291, 309, concerning effect of this procedural deficiency.

Appellant was free to raise the issue in the Circuit Court of the State, as was done in *Lawrence Baking Company v. U. C. C., supra*, thus occasioning consideration and decision by the Supreme Court of Michigan of the constitutional issue.

In an effort to avoid this infirmity, Appellant speaks in terms of "surprise" with reference to the failure of the Supreme Court of Michigan to follow *Chrysler Corp. v. Smith, et al.*, 297 Mich. 438; 298 N. W. 87 (1941). Aside from the difference in the fact situation involved in *Chrysler*, pointed out by the Michigan Supreme Court (Ex. A, 40), we find no Michigan Supreme Court cases affirming *Chrysler* prior to the instant cause. Contrary to the impression conveyed by the Jurisdictional Statement (13), Chrysler is not even mentioned in *General Motors Corporation v. Unemployment Compensation Commission*, 321 Mich. 724, 34 N. W. 2d 497 (1948), or in *Buzza v. Unemployment Compensation Commission*, 330 Mich. 223, 47 N. W. 2d 11 (1951). The reference in *Clapp v. Appeal Board*, 325 Mich. 212, 38 N. W. 2d 325 (1949), is in the context of a different fact situation in which the employees in question were on strike and the issue of "establishment" was not involved.

Appellant asserts that *Herndon v. Georgia*, 295 U. S. 441 (1935) may be distinguished from the instant cause, and then quotes what it describes as "the recognized rule as stated in that case (p. 444)" (Jurisdictional Statement, p. 16). Once again appellant engages in self-serving selection. In the immediately preceding sentences the Court says:

> "The long-established general rule is that the attempt to raise a federal question after judgment, upon a petition for rehearing comes too late, unless the court actually entertains the question and decides it." (citing numerous cases)
>
> "Petitioner, however, contends that the present case falls within an exception to the rule—namely, that the question respecting the validity of the statute as applied by the lower court first arose from its unanticipated act in giving to the statute a new construction which threatened rights under the Constitution." (pages 443-444)

It is of interest to note that the three Opinions filed in the instant cause by the Supreme Court of Michigan are unanimous in their agreement as to the proper interpretation of the statutory language here in question. Dissent by two members of the Court is based solely on obeisance to *stare decisis*. (See concurring Opinion of Justice Black, Ex. A, pp. 63-72, and dissenting Opinion of Chief Justice Dethmers, Ex. A, pp. 72-73.)

(3) The Judgments of the Supreme Court of Michigan rest on an adequate non-federal basis:

It is clear here that the decision of the State Court was based on an adequate non-federal ground, even aside from the fact that a federal question was not properly asserted. The decision that the "establishment" in which these laid off Michigan workers were last employed did not include within its scope the Canton, Ohio plant of Ford Motor

Company was wholly tenable. It was not "so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon the Federal question." *Enterprise Irrig. District v. Farmers Mut. Canal Company*, 243 U. S. 157, 164.

Adequate and independent non-federal, state grounds of decision existed. This court will not review judgments of state courts in such cases. *Herb v. Pitcairn*, 324 U. S. 117, 125-6. The decision by the state court here clearly required no reference to a federal question, the non-federal grounds being sufficiently broad to maintain the state court's judgments. *Eustis v. Bolles*, 150 U. S. 361, 369-70.

The decision turned upon the proposition that "establishment" is "the place where one is permanently fixed for residence or business; * * *" (38), and that the concept of "integral functioning" as a basic test of the extent of "the establishment" in the Michigan Employment Security Act was rejected (53).

CONCLUSION

It is respectfully submitted that this Court does not have jurisdiction of these appeals, and therefore, should grant this Motion to Dismiss.

Respectfully submitted,

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